

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

SALEEBAN ADAN,

Plaintiff,

v.

1:15-cv-4392-WSD

**DEKALB COUNTY DISTRICT
ATTORNEY and BALDWIN
COUNTY DISTRICT ATTORNEY,**

Defendants.

OPINION AND ORDER

This matter is before the Court on Magistrate Judge Janet F. King’s Final Report and Recommendation [3] (“R&R”). The R&R recommends the Court deny Plaintiff Saleeban Adan (“Plaintiff”) *in forma pauperis* status and dismiss this action without prejudice.

I. BACKGROUND

On December 16, 2015, Plaintiff, confined in Georgia State Prison in Reidsville, Georgia, filed his *pro se* complaint [1].

On January 21, 2016, the Magistrate Judge issued her R&R. In it, she noted that 28 U.S.C. § 1915(g) does not allow a prisoner to bring an *in forma pauperis* civil action in federal court “if the prisoner has, on 3 or more prior occasions, while

incarcerated . . . , brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g). Accordingly, the Magistrate Judge recommends this action be dismissed without prejudice. Plaintiff did not file any objections to the R&R, and has not otherwise taken any action in this case.

II. ANALYSIS

A. Legal Standard

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject, or modify a magistrate judge’s report and recommendation. 28 U.S.C. § 636(b)(1); Williams v. Wainwright, 681 F.2d 732 (11th Cir. 1982), cert. denied, 459 U.S. 1112 (1983). No party objects to the R&R, and the Court thus conducts a plain error review of the record. See United States v. Slay, 714 F.2d 1093, 1095 (11th Cir. 1983).

B. Discussion

A prisoner may not file an *in forma pauperis* civil action in federal court “if the prisoner has, on 3 or more prior occasions, while incarcerated . . . , brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be

granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g). When Section 1915(g) does not allow a prisoner to proceed *in forma pauperis*, the complaint should be dismissed without prejudice, and a prisoner wishing to pursue his or her claims must refile the action with full payment of the filing fee. See Dupree v. Palmer, 284 F.3d 1234, 1236 (11th Cir. 2002).

The Magistrate Judge determined that Plaintiff, while incarcerated, filed at least three civil actions that have been dismissed as frivolous, malicious, or for failure to state a claim. She determined Plaintiff does not show he is in imminent threat of serious injury, and recommends the Court deny Plaintiff *in forma pauperis* status and dismiss this action. The Court finds no plain error in these findings and recommendation, and this action is dismissed without prejudice. See Slay, 714 F.2d at 1095.

III. CONCLUSION


For the foregoing reasons,

IT IS HEREBY ORDERED that Magistrate Judge Janet F. King’s Final Report and Recommendation [3] is **ADOPTED**.

IT IS FURTHER ORDERED that Plaintiff is **DENIED** *in forma pauperis* status.

IT IS FURTHER ORDERED that this action is **DISMISSED**
WITHOUT PREJUDICE.

SO ORDERED this 18th day of August, 2016.



WILLIAM S. DUFFEY, JR.
UNITED STATES DISTRICT JUDGE